SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 275

LAWRENCE DYER, APPELLANT,

vs.

CITY COUNCIL OF THE CITY OF BELOIT, ROCK COUNTY, WISCONSIN, ET AL.

APPEAL FROM THE SUPREME COURT OF THE STATE OF WISCONSIN

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[fol. 1] [File endorsement omitted]

IN CIRCUIT COURT OF ROCK COUNTY

STATE OF WISCONSIN

LAWRENCE DYER, Petitioner,

vs.

CITY COUNCIL OF THE CITY OF BELOIT, ROCK COUNTY, WISCONSIN; A. D. TELFER, as City Manager of the City of Beloit, Rock County, Wisconsin; R. H. Calland, as City Clerk of the City of Beloit, Rock County, Wisconsin; and Stanley J. Goldschmidt, City Sanitarian of the City of Beloit, Rock County, Wisconsin, Defendants

PETITION FOR WRIT OF MANDAMUS—Filed September 25, 1946

To: Circuit Court for Rock County:

The petition of Lawrence Dyer respectfully alleges and shows to the court:

1. That at all times herein mentioned petitioner was and now is engaged in the business of selling milk and milk products;

2. That at all times herein mentioned the defendant A. D. Telfer was City Manager of the City of Beloit, Rock County, Wisconsin, and is now said City Manager; that at all times herein mentioned R. H. Calland was and now is City Clerk of said city; and that at all times herein mentioned, as petitioner is informed and believes, the defendant Stanley J. Goldschmidt was and now is City Sanitarian of said city;

3. That heretofore petitioner, pursuant to the ordinances of the City of Beloit, Rock County, Wisconsin, made application to the defendant City Clerk of said city for a license as a milk dealer and/or distributor in the City of Beloit, Rock County, Wisconsin;

4. That said application for license by said petitioner was signed by petitioner and contained all the required information to be contained in said application, and was presented to said City Clerk for presentation to the afore-

said City Council of the City of Beloit, and was accompanied by a tender of the license fee required for said license;

[fol. 2] 5. That said application for license, as petitioner is informed and believes, was presented by the aforesaid defendant City Clerk to the City Council of the City of Beloit, Rock County, Wisconsin on August 29, 1946; and that at a meeting of said City Council on said date said City Council rejected said application and refused to issue the aforesaid requested license;

That, as petitioner is informed and believes, said application was rejected and said license refused because of a provision, and only because of said provision in the aforesaid ordinances of the City of Beloit, to-wit:

> "(X) General Provisions:
>
> • • • • • • •
>
> "(2) No pasteurized milk shall be sold in the City of Beloit which shall not have been pasteurized in approved plants within six miles from the intersection of State Street and E. Grand Ave. in the City of Beloit."

6. Petitioner further alleges that he has complied with all of the provisions of the said Beloit Milk Ordinance other than the provision above set forth, and that he is willing to comply and stands ready to comply with all of the provisions of said milk ordinance except the provision above set forth;

7. That said defendants above named unreasonably and arbitrarily rejected petitioner's application for a license as aforesaid and unreasonably and arbitrarily refused to grant and issue a license as milk dealer and/or distributor to your petitioner;

8. Petitioner further alleges that he has and now does comply with all the requirements of said ordinance above referred to except the provision above quoted, and *as* to that, petitioner states that the same is unconstitutional, and that the refusal of said defendants to recommend, grant and issue a milk dealer's license to your petitioner deprives petitioner of his property and a right to make a livelihood without due process of law and is an illegal interference with interstate commerce.

[fol. 3] Wherefore, petitioner prays that peremptory mandamus be issued out of the court commanding the said A. D.

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Telfer, as City Manager of the City of Beloit, Rock County, Wisconsin; R. H. Calland, as Clerk of the City of Beloit, Rock County, Wisconsin, Stanley J. Goldschmidt as City Sanitarian of the City of Beloit, Rock County, Wisconsin, and the City Council of the City of Beloit, Rock County, Wisconsin, to issue a license to your petitioner as milk dealer and/or distributor, and for such other judgment or order as may be proper.

McGowan, Geffs, Geffs & Block, Attorneys for Petitioner, Lawrence Dyer.

Duly sworn to by Lawrence Dyer. Jurat omitted in printing.

[fol. 4] [File endorsement omitted]

IN CIRCUIT COURT OF ROCK COUNTY

[Title omitted]

RETURN OF DEFENDANTS—Filed September 25, 1946

We, A. D. Telfer, R. H. Calland and Stanley J. Goldschmidt, as City Manager, City Clerk and City Sanitarian, respectively, of the City of Beloit, Rock County, Wisconsin, do hereby make return to the alternative writ of mandamus, hereto annexed, and for cause why we have not and cannot lawfully do the things therein commanded, respectfully represent and show to the Court:

That the petitioner, Lawrence Dyer, applied for a license to sell milk within the City of Beloit, Rock County, Wisconsin, although admitting that he expected to obtain the milk to be sold in said city from the pasteurization plant of the Dean Milk Company at Chemung, Illinois, a village which is a distance of thirty to thirty-five miles from the City of Beloit; that these defendants rejected the [fol. 5] application of the petitioner for such license because of a clause in a city ordinance of Beloit which provides that no pasteurized milk shall be sold in the City of Beloit which shall not have been pasteurized in approved plants within six miles from the intersection of State Street and East Grand Avenue in said city; that, in the judgment of these defendants, such provision represents a valid exercise of the regulatory authority of the City of Beloit;

These defendants further allege that the issuance of peremptory writ of mandamus, compelling the City of Beloit to issue a license to the petitioner to sell milk in said city, would, under all the circumstances, be inequitable and contrary to the public interests; that the city ordinance of Beloit provides no- only for the inspection by city employees of pasteurization plants, but also for the inspection of dairy farms serviceing such plants; that the City of Beloit employs too full-time inspectors for the purpose of making sanitary inspections not only of dairy plants and dairy farms, but also of other business places, such as taverns, restaurants, grocery stores, meat markets, confectionery stores and soda fountain places; that in the event a license were to be granted to the petitioner, it would be necessary for the City of Beloit to employ a third inspector merely for the purpose of performing the additional work incidental to the issuance of a license to the petitioner; that the supply of milk now delivered to Beloit Dairy plants far exceeds the local demand, and that a great part of the milk produced in the rural are- immediately sur- [fol. 6] rounding Beloit is shipped from Beloit to other places for consumption.

All of which is respectfully submitted.

A. D. Telfer, R. H. Calland, Stanley J. Goldschmidt.

Duly sworn to by A. D. Telfer, et al. Jurat omitted in printing.

[fol. 7] [File endorsement omitted]

IN CIRCUIT COURT OF ROCK COUNTY

[Title omitted]

DECISION AND ORDER DENYING WRIT—Filed December 9 1946

This action arises out of the refusal of the Common Council of the City of Beloit to grant a license to the Petitioner to sell and distribute pasteurized milk within the City of Beloit.

The milk which the Petitioner prop-sed to sell and deliver in the City of Beloit, would be pasteurized at the Dean Milk Company plant located at Chemung, Illinois, son-

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twenty-five to thirty-five miles distant from said City of Beloit.

Section 8.09 X (2) of the General Ordinances of the City of Beloit, provides that:

> "No pasteurized milk shall be sold in the City of Beloit which shall not have been pasteurized in approved plants within six miles from the intersection of State Street and E. Grand Avenue, in the City of Beloit."

The Petitioner's application for a license was filed on August 29, 1946, and was rejected at a regular Council meeting held on August 30, 1946, for the reason that the [fol. 8] pasteurization plant of the Dean Milk Company was located more than six miles from the intersection of the two above named streets in the City of Beloit, and that proper inspection would require unreasonable additional expense to the city of Beloit.

The Petitioner brings this mandamus proceeding to compel the issuance of the license, claiming that the City of Beloit unreasonably and arbitrarily refused to grant the license, and that such refusal deprives him of his property rights and of constitutional rights without due process of law, and is an illegal interference with interstate commerce.

No objection is raised by the City as to the Grade or quality of the milk sought to be sold, and it is conceded that the petitioner has complied with all of the terms of the Beloit Ordinance, except in the one respect, that the pasteurization plant of the Dean Milk Company is located at Chemung, Illinois, a distance of more than six miles from the City of Beloit; i. e., a distance of between twenty-five and thirty-five miles from the point indicated by the Beloit City Ordinance.

A stipulation of facts was entered into between Council respectively, and some testimony taken upon the hearing. The only issue involved is as to whether or not the six mile provision of the Beloit Ordinance constitutes an unreasonable interference with the rights of the petitioner.

It is well recognized throughtout this country, and some other countries, that milk is a valuable and universal food product; that it is peculiarily liable and subject to contamination and adulteration; that the business of producing [fol. 9] and distributing milk is one which, when improperly

conducted or carelessly handled, may seriously affect the public health; that in the interest of public health and safety the regulation of the production and distribution of milk is within the police power of the sovereignty; and that strict regulatory provisions may be enacted and enforced to guarantee to the consumer that protection which the sovereignty owes to him.

It is now a universal requir-ment and practice that milk shall be inspected as its source of supply, in order to determine, not only its proper grade, but whether the conditions surrounding its production are sufficiently sanitary, etc. Qualified inspectors are therefore appointed or hired by municipalities to make periodical inspections.

The petitioner herein has made no offer to assume or repay the additional expense necessary to have such additional inspections made. The cases cited by petitioner's counsel, where ordinances similar to the Beloit Ordinance have been held invalid, are cases where milk concerned was produced in a territory where inspections were already being made by regular inspectors of the particular municipality involved, and would incur no particular additional expense to the City.

Zoning ordinances are valid if reasonable and not intended as a trade barrier. They must also be reasonable [fol. 10] and not arbitrary, capricious or discriminating. I am aware that the mere fact that a City already has a sufficient number of milk dealers, or has an adequate supply of milk, would present no valid reason for the refusal of a license to sell milk in the City, as that would then be an unfair and illegal interference with property and constitutional rights.

I Am Therefore of the Opinion, that under all the circumstances appearing in this proceeding, the Or-inance here involved was not intended as a trade barrier, and is not unreasonable, arbitrary or capricious, and is therefore constitutional and valid.

The petition for a per-mptory writ requiring the City of Beloit to Issue a license to the petitioner is therefore ordered denied.

Dated December 7, 1946.

By the Court.

Jesse Earle, Circuit Judge.

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[fol. 11] [File endorsement omitted]

In Circuit Court of Rock County

Lawrence Dyer, Petitioner,

vs.

City Council of the City of Beloit, Rock County, Wisconsin; A. D. Telfer, as City Manager of the City of Beloit, Rock County, Wisconsin; R. H. Calland, as City Clerk of the City of Beloit, Rock County, Wisconsin; and Stanley J. Goldschmidt, City Sanitarian of the City of Beloit, Rock County, Wisconsin, Defendants

Judgment—Filed December 20, 1946

This action having come on for trial upon the petition of the relator herein and the return of the defendants, and having been tried by the Court, and the Court having determined, as a conclusion of law, that the relator is not entitled to a peremptory writ of mandamus, as prayed in the petition;

Now, Therefore, on motion of C. L. Haugan and Arnold, Caskey & Robson, attorneys for the defendants,

It Is Ordered and Adjudged that the request of the relator for the issuance of a peremptory writ be denied, and that his petition be dismissed, and that the defendants do recover of the said relator the sum of One Hundred Six and 90/100 Dollars ($106.90) as their costs and disbursements in this action, as taxed.

Dated December 20th, 1946.

By the Court:

Jesse Earle, Judge.

[fol. 12] [File endorsement omitted]

IN CIRCUIT COURT OF ROCK COUNTY

[Title omitted]

STIPULATION OF TESTIMONY AND EXHIBIT IN LIEU OF BILL OF EXCEPTIONS—Filed in Supreme Court, July 25, 1947

It Is Hereby Stipulated, in open court, by Lawrence Dyer, Petitioner, by McGowan and Geffs his attorneys, and the defendants by C. L. Haugan, City Attorney for the City of Beloit and Earl J. Caskey, their attorneys; that on the 29th day of August, 1946, the petitioner, Lawrence Dyer, made written application to the City of Beloit for a license to distribute the milk of the Dean Milk Company in the City of Beloit, and that in so doing he has complied with all of the terms of the City Ordinance in Beloit, except in the one respect, that that past-urization plant of the Dean Milk Company is located at Chemung, Illinois, a distance of more than six miles from the corner of East Grand Avenue and State Street in the City of Beloit; that the pas-tu-rization plant of the Dean Milk Company, from which the Petitioner will receive his milk for distribution in Beloit is between teenty-five and thirty miles from the point indicated by the ordinance in the City of Beloit.

It Is Also Stipulated, that in accordance with the terms of the City Ordinance, the petitioner has filed with the City Clerk a list of the farmers who bring their milk to the Chemung dairy of the Dean Milk Company, and that the number of farms so named amounts to one hundred ninety-seven; that such farms are located in the Counties of McHenry, Boone, and Winnebago in the State of Illinois, and Walworth County in the State of Wisconsin.

[fol. 13] It Is Further Stipulated, that on the 30th day of August, 1946, the City Council of Beloit rejected the application of the petitioner for such milk license upon the ground that the past-urization plant of the Dean Milk Company was located more than six miles from the intersection of the two above named streets in the City of Beloit.

It Is Further Stipulated, that it is the intention of the petitioner, in the event a license is granted to him, to obtain milk pasteurized at the factory of the Dean Milk Company at Chemung, Illinois and to truck such milk to the

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City of Beloit for sale in the City of Beloit for at retail stores.

Dated this 26th day of September, 1946.

LAWRENCE DYER called as witness:

Examination.

By Mr. Block:

My name is Lawrence Dyer; I am the petitioner; and applicant for milk distributor's license from the City of Beloit, Wisconsin; application made some time in August; I intend to distribute milk to retail merchants in the City of Beloit, and they in turn will sell it to consumers. This milk is pasteurized at Chemung, Illinois. The milk is obtained from farmers and brought to the Dean plant at Chemung, Illinois, where it is cooled, pasteurized and bottled in paper cartons of 1 quart each. These cartons are placed in cases holding 20 quarts, which I place in my truck and carry to retail merchants. This milk is Grade A milk and its composition qualifies as to the sanitary conditions and quality required for the Beloit City Ordinance.

Cross-examination.

By Mr. Caskey:

I intend to deliver milk to the City of Beloit every day except Sunday. The milk that I intend to deliver is received at the plant the same day it is delivered and would be delivered normally within two hours after being pasteurized.

[fol. 14] Redirect examination.

By Mr. Block:

The milk is cooled to Thirty-four degrees when it comes from the pasteurizer and placed in paper cartons. My truck is insulated and in warm weather I use ice. When the milk arrives at Beloit, its temperature would not be more than Forty-two Degrees Fahrenheit. I had occasion to check the bacteria count on this milk with the bacteria count of milk sold in Beloit, and in every instance it was

lower than other milk pasteurized and sold in Beloit. This milk is sold in the City of Chicago and suburbs. Each farm which supplies milk to the Dean plant is inspected every week and sometimes twice a week by the Chicago Board of Health. The Dean Milk Company also has its own inspectors who inspect the source of the milk at the farms. The City of Chicago and its suburbs operate under what is known as the Model Milk Ordinance formulated by the Public Health Service of the United States. The City of Chicago operates under what is known as the Mayor Kelly Milk Ordinance, which is as stringent as the Model Milk Ordinance formulated by the Public Health Service of the United States.

STANLEY J. GOLDSCHMIDT called as witness on behalf of defendants, testified:

Examined.

By Mr. Caskey:

My name is Stanley J. Goldschmidt and I am City Sanitarian of the City of Beloit, Wisconsin, and I have had that position for thirteen months. Before being employed by the City of Beloit, I did similar work for Rock County for about four years. My duties to the City of Beloit are in charge of the whole sanitary program under the Health Department of the City of Beloit. This entails, with the aid of one inspector, inspection of all public eating places, which include approximately 38 restaurants, 16 sode *mountains*, about 18 light lunch establishments, approximately 20 confectionery stores, 81 combination groceries and markets, 8 bakeries, 53 taverns and clubs; by clubs I mean those having a liquor license which is similar to a tavern although being semi-private. I also inspect dairies, eight dairies and about 165 firms that sell milk to these dairies. [fol. 15] I also supervise collection of garbage which details employment of approximately 10 men and the operation of three or four trucks and the collection of cans from approximately 8,500 to 8,700 households, about half of these having more than one can of garbage.

"The Court: Are these inspections made within six miles of the City of Beloit?

"A. Yes."

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I also supervise inspection of those who handle food, and we have approximately 1500 people engaged in the handling of food in the above mentioned establishments, and we require that these people submit to physical examination once a year or oftener if necessary as deemed by the health officer, and along with this program it is my duty to check these 1500 people to find out if any new employees are coming into these establishments and to do field work for the clinics which are held for the examination of these people.

I also handle any complaints that come in the office regarding sanitary conditions. These complaints are received daily sometimes as high as ten a day. I also through our department take care of quarantine and contagious diseases. This is necessary because we have a part time health officer. I have one man, Harold Taylor, that helps me. The work keeps both of us busy all the time and it is necessary for me to be in the office part of the time to handle the correspondence. It would not be possible for Mr. Taylor and myself to inspect a considerable number of new dairies unless we had another inspector added to our department. We inspect all dairies which now bring milk to Beloit. Some dairies haul Grade B milk and some grade A. On the grade A I find we have between 106 to 111 farms. Yesterday we dropped three from the A side and placed them on the B side. Grade A farms are inspected periodically. These inspections entail sediment tests, blue tests, sometimes tests to laboratory for blue plate count. On the B side there is approximately 319 farms. These farms are not inspected by our department due to the fact that grade B milk is used in manufactured products, and that inspection is taken care of by the State Department of Agriculture. Whenever we need extra farms for milk on [fol. 16] the A side we pick out a B farm and if the bacteria examination shows it is good we make a trip to the farm and with some small amount of changes we are able to put it on the A side. We give what assistance we can to the State Department of Agriculture in the inspection of the B farms.

We make no inspections of the B farms unless it is being transferred to the A side. Grade A milk is delivered for sale in Beloit and Grade B is manufactured into mixes and not delivered for sale in Beloit. There is more milk coming into Beloit every day than what local people use.

There is more grade B milk delivered than there is grade A milk. The distance traveled inspecting Grade A farms is a radius of 5 to 6 miles from Beloit. All the pasteurization plants delivering milk within Beloit are located within 6 miles from the corner of State and Grant Avenue. If this license was granted, it would be necessary for the City of Beloit to hire another inspector.

Cross-examination.

By Mr. Block:

We inspect grade A farms about twice a year. These farms are within a radius of six miles from Beloit. There are 8 pasteurization plants within the six mile limit and there are no pasteurization plants outside of this six mile limit, that sell milk to Beloit.

My opposition to granting a license to Mr. Dyer was based upon the proposition that the pasteurization plant where he received his milk was located more than six miles from State and Grand Avenue, City of Beloit.

I do not feel that my department can take on any more inspections for producers or plants without the addition of an extra man.

"Q. Let's put it this way. Assuming that another pasteurization plant located itself within the six mile zone, and they obtained their milk from we will say 150 additional [fol. 17] producers that are not selling milk to Beloit now, in your opinion would you have to then employ an additional inspector because of the amount of work you now have?

"A. You sir, that would be my opinion that we would have to if there was that many farms, 150 farms, additional farms.

"Q. Regardless of location, whether within the zone or outside of zone?

"A. That is right."

There is no objection to the quality or sanitary condition of the milk that Mr. Dyer intends to deliver to the City of Beloit that I know of, and we have on one or two occasions delivered it to the State Laboratory of Hygiene. I would say that it was about the average of the milk sold in Beloit. It would not be any worse or any better.

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Redirect examination.

By Mr. Caskey:

An additional inspector would cost the City of Beloit about $200.00 a month plus traveling expenses. It would be hard to say whether his work would be devoted to inspecting additional farms without first laying out a program.

City Ordinances of the City of Beloit marked Defendant's Exhibit 1 received in evidence.

DEFENDANT'S EXHIBIT 1, BEING THE MILK ORDINANCE OF THE CITY OF BELOIT

Section 8.09: Licensing and Enforcement:

(1) It shall be unlawful for any person, firm, association or corporation to sell or distribute milk, cream, skim milk or buttermilk in the limits of the city of Beloit unless such person, firm, association or corporation shall possess a license or permit therefor granted by the City of Beloit. [fol. 18]. No license fee shall be required, however, of any person selling milk or milk products to any dairy. If such person, firm, association or corporation shall deliver such milk or milk products from house to house he shall be required to have a license, the fee for which license shall be $10.00 per year. If such person, firm, association or corporation shall — such milk or milk products from any store, hotel or eating place, a permit shall be required the fee for which shall be $1.00 a year.

(2) An application for such license or permit shall state the name and address of the persons having control of all cows or herds producing the products to be sold or distributed, and the address of the premises where all such cows or herds are kept.

(3) The license shall be obtained from the City Clerk. This license shall be valid from July 1st to June 30th inclusive of the year issued, and those licensed in the interim shall pay the full fee for the remainder of the year in which they are licensed. The Health Officer shall have charge of the enforcement of this act.

(4) The sale or distribution of milk, cream, skimmed milk, buttermilk and milk products within the city, except in conformity with the following requir-ments, is hereby prohibited.

(5) After the issuance and delivery of the license, any change of location of the place of business made by the licensee shall render his license invalid, unless the Health Officer in writing grants continuance of said license.

(6) No such license shall be issued for more than one year and no license shall be valid after the last day of June next following the date of issuance thereof.

(7) The City Clerk shall furnish two metal tags not less than 4x8 inches in size to each licensee delivering milk in wagons, motor cars, or other vehicles who procures a milk license and shall have paid the City Clerk the proper fee. The tags shall have marked upon them the words "Milk, Beloit, 19—, No. —," being the year during which the license expires and the serial number of the same, which license plate shall at all times be conspicuously displayed on both [fol. 19] sides of such vehicle and all such plates shall be removed immediately upon the expiration or revocation of the license under which they were granted. In the event a license place is lost, an additional fee of fifty cents (50¢) per pair will be charged. Each vehicle shall carry two such license plates. The charge for such plates shall be $1.00 per set of two after the set delivered in addition to the first one.

(A) Milk: (1) Milk is hereby defined to be the fresh, clean, lacteal secretion obtained by the complete milking of one or more healthy cows, properly fed and kept, excluding that obtained within fifteen days before and five days after calving or as much longer as may be necessary to render the milk practically colostrum free, which contains not less than 8½% of solids not fat, and not less than 3% of milk fat. It shall be free from dirt, filth, foreign substance, added water, adulterants and preservatives or added dried or condensed milk products. Whole milk sold or distributed for direct human consumption shall be classified as "raw milk" or "pasteurized" milk, except as herein specified under the term "special grades."

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Pasteurized Milk

(C) Pasteurized Milk: (1) Pasteurized milk is milk the average bacterial plate count of which does not exceed 30,000 per c.c. or the average reduction time is not less than 6 hours.

(2) Pasteurized milk is milk the average bacterial plate count of which does not exceed 200,000 per c.c. or the average reduction time of which does not exceed 6 hours at any time before pasteurization, which has been pasteurized and cooled in a milk plant conforming with all the following items of sanitation and the average plate count of which at no time after pasteurization and until delivery exceeds 30,000 per c.c.

(3) The terms "pasteurization," or "pasteurized," and similar terms shall be taken to refer to the process of heat-[fol. 20] ing every particle of milk and milk products to at least 143 degrees F. and holding at such temperature for at least 30 minutes or to at least 160 degrees F. and holding at such temperature for at least 15 seconds, in equipment approved by the Health Officer and properly operated; provided, that nothing contained in this definition shall be construed as disbarring any other process which has been demonstrated to be equally efficient and is approved by the State Department of Agriculture.

(4) The floors of all rooms in which milk is handled shall be constructed of concrete or other equally impervious and easily cleaned material and shall be smooth, properly drained and provided with trapped drains and kept clean.

(5) The walls and ceilings of rooms in which milk is handled or stored shall be frequently painted with a light colored paint or finished in a manner approved by the Health Officer and kept clean.

(6) All openings into the outer air shall be effectively screened and all means necessary for the elimination of flies shall be used.

(7) All rooms shall be well lighted and ventilated.

(8) The various milk plant operations shall be so located and conducted as to prevent any contamination to the milk or to the sterilized equipment. There shall be separate rooms for (a) the pasteurizing, cooling, and bottling

operations; (b) the container washing and sterilizing operation. Cans of raw milk shall not be unloaded directly into the pasteurizing room. Pasteurized milk shall not be permitted to come into contact with equipment with which unpasteurized milk has been in contact subsequent to disinfection. Rooms in which milk or cream or sterilized utensils or containers are handled or stored shall not open directly into and stable or living quarters.

(9) Every milk plant shall be provided with toilet facilities conforming with the ordinances of the city of Beloit. There shall be at least one room or vestibule not used for milk purposes between the toilet room and any room in which milk or milk products are handled or stored. The [fol. 21] doors of all toilet rooms shall be self-closing. Toilet rooms shall be kept in a clean condition, in good repair and well ventilated. In case privies or earth closets are permitted and used they shall be separate from the building and shall be of a sanitary type constructed and operated in conformity with the ordinances of the city of Beloit.

(10) The water supply shall be easily accessible, adequate and of a safe, sanitary quality.

(11) Washing facilities shall be provided including hot, running water, soap and sanitary towels or a type approved by the Health Officer. The use of the common towel is prohibited.

(12) All piping used to conduct milk or milk products shall be sanitary milk piping of a type which can be easily cleaned with a brush. Pasteurized milk and milk products shall be conducted from one piece of equipment to another only through sanitary piping.

(13) All equipment with which milk comes in contact shall be constructed in such a manner as to be easily cleaned.

(14) All wastes shall be disposed of in conformity with the requirements of the Health Officer.

(15) All multi-use milk containers and milk apparatus shall be thoroughly cleaned after each usage and sterilized in a manner approved by the Health Officer immediately after usage.

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(16) After sterilization all bottles, cans and other containers shall be stored in such manner as to be protected from contamination.

(17) Between sterilization and usage and during usage, containers and equipment shall be handled or operated in such manner as to permit contamination of the milk.

(18) The time and temperature record charts shall be dated and preserved for a period of one year for the information of the Health Officer.

(19) All milk not pasteurized within two hours after it is received at the plant shall be immediately cooled to a tem- [fol. 22] perature of 50 degrees F. or less and maintained thereat until pasteurized, and all pasteurized milk shall be immediately cooled to a temperature of 50 degrees F. or less and maintained thereat until delivery.

(20) Overflow milk shall not be sold for human consumption.

(21) Milk to be consumed in the form of whole milk shall be delivered to the final customer within thirty-six hours of the time of pasteurization. Milk shall not be repasteurized.

(22) All persons coming in contact with the milk or milk products containers or equipment, shall wear clean outer garments and shall keep their hands clean at all times while thus engaged.

(23) Every person connected with the pasteurizing plant whose work brings him or her in contact with production, handling, storage or distribution of milk or milk products shall have within twelve months passed a medical examination satisfactory to the Health Officer.

(24) Notice shall be sent to the Health Officer immediately by a proprietor or manager of a pasteurizing plant of any case of sickness occurring among the personnel or families of personnel working in the plant.

(25) Milk brought to the pasteurizing plant must be delivered promptly or it must be cooled to less than 60 degrees F. within two hours of the time of milking. It shall come from dairies or dairy farms conforming to the items of sanitation specified herein.

(D) Cream: Cream is that portion of the milk, rich in milk fat, which rises to the surface of the milk standing, or is separated from it by centrifugal force, is fresh and clean, and which contains not less than 18% of milk fat. Cream sold in the city of Beloit shall be known as raw cream or pasteurized cream in addition to such names as indicate its various standards.

(E) Raw Cream: Raw Cream is cream produced under the same requirements as raw milk, the average bacterial plate count of which shall not exceed 100,000 count c.c. at the time of delivery to the consumer.

[fol. 23] (F) Pasteurized Cream: Pasteurized cream is cream the average bacterial count of which does not exceed 400,000 per c.c. before pasteurization and does not exceed 60,000 per c.c. after pasteurization and until delivery to the consumer. It shall come from farms meeting the requirements for pasteurized milk and it shall be pasteurized at plants conforming to the requirements of this ordinance.

(G) Buttermilk and Skimmed Milk: (1) Skimmed milk is milk from which substantially all the milk fat has been removed.

(2) Buttermilk is the product which remains when milk fat is removed from milk or cream, sweet or sour, in the process of churning and contains not less than 8½% of solids.

(3) Buttermilk (natural or cultured) and skimmed milk sold or distributed in Beloit for individual and family consumption shall be produced from milk conforming with the requirements for raw milk, if made from raw milk, or pasteurized milk, if pasteurized. Buttermilk and skimmed milk shall be sold or distributed only in clean and sanitary containers.

(H) Milk Products: Milk products shall be taken to mean any product made from milk or cream. Milk products shall be produced and kept in a clean and sanitary manner. Milk, cream, buttermilk, or skimmed milk entering into the composition of soft drinks or other unheated mixtures, sold or distributed or offered for sale in Beloit shall conform to the requirements for raw or pasteurized milk, cream, buttermilk or skimmed milk intended for individual or family consumption.

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(I) Bulk Milk: Bulk milk, bulk cream, bulk buttermilk and bulk skimmed milk, of a quality permitted by the State Department of Agriculture, properly cooled, may be sold or distributed in properly sterilized containers for cooking and manufacturing purposes, but not for drinking purposes.

(J) Goat Milk: Goat milk is the lacteal secretion, free from col-strum, obtained by the complete milking of healthy [fol. 24] goats, and shall comply with all the requirements of this section. The word "cows" shall be interpreted to include goats.

(K) Other Requirements: (1) Stores, restaurants and all other eating places receiving milk, cream, buttermilk, skimmed milk, milk products for resale and distribution shall keep such products properly cooled or iced and in a sanitary manner, until such time as they are sold or distributed, and such products shall only be sold or distributed while in a clean and fresh condition. Milk and cream to be sold in original containers only.

(2) No milk producer or distributor shall transfer milk or milk products from one container to another upon the street or in any vehicle or store, in any place except a bottling or milk room permitted by the Health Officer.

(3) No milk distributor or producer shall purchase or obtain milk, cream, skimmed milk or buttermilk from any person, firm, or corporation whose name and address is not furnished by the Health Officer, prior to the time of obtaining such milk or cream. Consent must be obtained from the Health Officer before such milk, cream, buttermilk or skimmed milk is obtained.

(4) All vehicles in the City of Beloit used in the delivery of milk shall be so constructed as to protect the milk from the sun and from contamination.

(L) Milk Producer: A milk producer is any person who owns or controls one or more cows a part of or all the milk products from which is sold and delivered to another person.

(M) Milk Distributor: A milk distributor is any person who has in his possession, offers for sale, sells or delivers to another any milk or milk products for consumption to the final consumer.

(N) Dairy or Dairy Farm: A dairy or dairy farm is any place or premises where one or more cows are kept, a part or all of the milk or milk products from which is sold and delivered to any person other than the immediate family.

[fol. 25] (O) Milk Plant: A milk plant is any place or premises, or establishment where milk or milk products are processed, stored, bottled, pasteurized, or prepared for sale or distribution.

(P) Health Officer: The term "Health Officer" shall mean the health authority of the city of Beloit or his authorized representative.

(Q) Disinfectant: A disinfectant shall be taken to mean any germicidal substance approved by the Health Officer.

(R) Person: Wherever the word "person" has been used in the Section, it shall be deemed to include any person, persons, firm, association, company, or corporation.

(S) Sell, Offer or Deliver for Sale or Exchange: For the purposes of this Chapter the words "sell, offer, deliver for sale or exchange" or their equivalents, shall include the serving of milk or its fluid derivatives for compensation at all places where meals or lunches are served. All milk served for beverage purposes in restaurants etc. shall be served only in the original bottles; provided these requirements shall not apply to milk used in mixed beverages.

(T) Bottling and Capping: All raw and pasteurized milk as defined in this section sold to stores, restaurants and other eating places and delivered to the family trade shall be bottled and capped, using standard milk bottles or single service containers. The bottles shall be cleaned and efficiently sterilized prior to filling and the filling shall be accomplished with clean and sanitary apparatus in such manner as to prevent any part of the person or clothing from coming in contact. Capping shall be done by mechanical cappers or machinery kept in clean and sanitary condition. Caps shall be purchased in sanitary tubes and stored and handled in such a way as not to contaminate the milk or cream. Single service containers shall be purchased and stored only in sanitary cartons and shall be kept clean in a dry place and shall be filled and handled in such a manner as to permit of no contamination. The sterilization of

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bottles and filling and capping shall be performed within the [fol. 26] pasteurization plant or in the milk house where raw milk is prepared except that by consent of the Health Officer, storing and capping of bottles may be performed in a milk house, or room situated elsewhere and fulfilling all the conditions required of the milk house described under the caption, raw milk. Where such consent is given, the milk and cream shall be transported in covered containers, unexposed to the sun, and shall be cooled in conformance with this ordinance.

(U) Labeling: All bottles, cans, packages and other containers inclosing milk or cream, buttermilk, or skimmed milk shall be permanently labeled and marked with the name of the contents, the word "Pasteurized" if the contents have been pasteurized and the word "Raw" if the contents are raw, and the name of the producer or distributor. The label or marks shall be letters of a size and kind approved by the Health Officer and shall contain no marks or words not approved by the Health Officer.

(V) Bacterial Count and Other Tests: (1) as used herein, the term "average bacterial plate count" shall mean the logarithmic average, and the "average reduction time" shall mean the arithmetic average, of the respective results of such tests on the last four consecutive samples, taken by the milk inspector at such time and place as he sees fit. All stores, cafes, restaurants, soda fountains and milk vendors shall furnish the milk inspector with such samples upon his request, and he shall make payment if demanded.

(2) Bacterial counts and reduction tests shall be made according to the latest standard methods recommended by the American Public Health Association. Other chemical and physical tests for the determination of adulteration shall be made according to the latest standard methods of the American Public Health Association and the Association of Official Agricultural Chemists.

(W) Special Grades: (1) Certified milk is milk which conforms with the current requirements of the American Association of Medical Milk Commissions.

[fol. 27] (2) Raw milk as defined in this ordinance is essentially Wisconsin Grade A Raw Milk.

Under the supervision and consent of the Wisconsin Department of Agriculture, raw milk with such modifications

in production as that Department desire- may be termed and labeled Wisconsin Grade A Raw Milk.

(3) Pasteurized milk may, with the consent of the Wisconsin Department of Agriculture, and under regulations specified by them, be termed and labeled Wisconsin Grade A Pasteurized Milk.

(X) General Provisions: (1) No milk or cream shall be sold, distributed, offered for sale or delivered within the city of Beloit which is not either Beloit Grade "A" raw milk, pasteurized milk, or special grades.

(2) No pasteurized milk shall be sold in the city of Beloit which shall not have been pasteurized in approved plants within six miles from the intersection of State street and E. Grand Ave., in the City of Beloit.

(3) Milk to be consumed in the form of whole milk shall be delivered to the final consumer within 48 hours of the time of pasteurization.

(4) Milk sold or kept for sale or use within the City of Beloit shall not contain more foreign matter than shall leave a perceptible amount of sediment or stain other than that of natural butter fat when a pint sample thereof is filtered through a pledget of cotton one inch in diameter. Such milk shall be entirely free from disease-producing bacteria and likewise free from blood or pus or things dangerous or detrimental to health.

(5) No person shall within the city of Beloit produce, sell, offer or expose for sale or have in possession with intent to sell any milk or milk product which is adulterated or misbranded.

(6) The Health Officer or any officially appointed representative he may so designate shall inspect periodically or at such time as convenient or which expediency may require, every dairy farm producing milk and cream for consumption within the city of Beloit and all milk plants whose milk and cream are intended for consumption within the city of Beloit.

[fols. 28-29] (7) Samples of milk and cream from dairies, milk depots, stores, cafes, soda-fountains, restaurants and other places where milk products are sold shall be tested as often as the Health Officer may require. Bacteria counts

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and other tests shall be made in conformity with the standard methods recommended by the American Public Health Association and the Association of Official Agricultural Chemists. Tests may include such other chemical and physical determinations as the Health Officer may deem necessary for making macterial counts and the detection of adulteration. Notices of bacterial counts shall be given to the producer or distributor concerned as soon as made. Samples may be taken by the Health Officer at any time prior to the final delivery to consumer of any milk or milk products. All dairies, milk plants, milk depots, stores, cafes, restaurants, soda-fountains and other places which shall sell or offer for sale milk or milk products in the city of Beloit shall furnish the Health Officer, upon his request, the names and address of source from which their milk supply is obtained.

(8) The delivery of milk and cream to and the collection of milk containers from quarantined residences, or where the Health Officer directs, shall be subject to special requirements.

(Y) Revocation of License: A license may be suspended or revoked by the Health Officer upon the violation of the holder thereof of any of the terms of this section, or, when in the judgment of the Health Officer, the milk supply in question has become a public health menace, and provided the holder of such license shall have the right of appeal to the City Council.

(Z) Penalty: Any person who shall violate any provision of this section may be subject to a fine of not more than One Hundred Dollars or by a jail sentence not to exceed 60 days.

[fol. 30] Caption omitted.

[fol. 31] In Circuit Court of Rock County

[Title omitted]

Notice of Appeal to Supreme Court—Filed January 18, 1947

Please Take Notice that Lawrence Dyer hereby appeals to the Supreme Court of the State of Wisconsin from the Judgment of the Circuit Court for Rock County, Wisconsin, dated December 20, 1946, which dismissed his petition and rendered costs against him in the amount of One Hundred Six and 90/100 Dollars ($106.90) and from the whole of said Judgment.

Dated December 31, 1946.

McGowan, Geffs, Geffs & Block, Attorneys for Petitioner, Lawrence Dyer.

To C. L. Haugan and Arnold, Caskey and Robson, Attorneys for the Defendant; Katherine Garman, Clerk of Circuit Court, Janesville, Wisconsin.

[File endorsement omitted.]

[fol. 32] Bond on appeal for $250.00 approved and filed Jan. 18, 1947, omitted in printing.

[fol. 33] [Endorsed:] Due service of within Notice of Appeal and appeal bond admitted this 4th day of January, A. D., 1946. C. L. Haugan, Arnold, Caskey & Robson, Attorneys for Defendants. Original. Due service admitted this Jan. 7, 1947. Katherine Carman, Clerk Circuit Court, Rock Co., Wis.

[File endorsement omitted.]

[fol. 34] IN SUPREME COURT OF WISCONSIN

[Title omitted]

MINUTE ENTRY—May 13, 1947

And now at this day came the parties herein, by their attorneys, and this cause having been argued by Eli Block, Esq., and George S. Geffs, Esq., for the said appellant, and submitted on brief for the said respondents, and the court not being now sufficiently advised of and concerning its decision herein, took time to consider of its opinion.

[fols. 35-36] IN SUPREME COURT OF WISCONSIN

Rock Circuit Court—Opinion by Justice Barlow.

LAWRENCE DYER, Appellant,

vs.

CITY COUNCIL OF THE CITY OF BELOIT, ROCK COUNTY, WISCONSIN, A. D. Telfer, as City Manager of the City of Beloit, Rock County, Wisconsin, R. H. Calland, as City Clerk of the City of Beloit, Rock County, Wisconsin, and Stanley J. Goldschmidt, City Sanitarian of the City of Beloit, Rock County, Wisconsin, Respondents.

JUDGMENT—June 10, 1947

This cause came on to be heard on appeal from the judgment of the Circuit Court of Rock County and was argued by counsel. On consideration whereof, it is now here ordered and adjudged by this Court, that the judgment of the Circuit Court of Rock County, in this cause, be, and the same is hereby, affirmed with costs against the said appellant taxed at the sum of Forty-nine Dollars and Ninety Cents ($49.90).

[fol. 37] IN SUPREME COURT OF WISCONSIN

[File endorsement omitted]

LAWRENCE DYER, Appellant,

v.

CITY COUNCIL OF THE CITY OF BELOIT, ET AL., Respondents.

Appeal from a Judgment of the Circuit Court for Rock County. Jesse Earle, Circuit Judge. Affirmed

September 11, 1946, Lawrence Dyer, petitioner and appellant, filed a petition praying for a writ of mandamus directing the city council of the city of Beloit, Rock county, Wisconsin, A. D. Telfer, city manager of the city of Beloit, R. H. Calland, city clerk of the city of Beloit, and Stanley J. Goldschmidt, city sanitarian of the city of Beloit, defendants and respondents, to issue to him a license as a milk distributor in the city of Beloit. Case was tried to the court, and judgment entered December 20, 1946, dismissing the petition. Petitioner appeals. The facts will be set forth in the opinion.

OPINION—Filed June 10, 1947

[fol. 38] BARLOW, *J.* The city of Beloit passed an ordinance under its police power regulating the sale and distribution of whole milk for direct human consumption, and the question presented involves the constitutionality of this ordinance. The only provision attacked is sec. 8.09(X)(2) of the general ordinance, which provides:

> "No pasteurized milk shall be sold in the city of Beloit which shall not have been pasteurized in approved plants within six miles from the intersection of State Street and E. Grand Ave. in the city of Beloit."

It is claimed this is a trade barrier, violates the right of contract guaranteed under the Fourteenth Amendment of the constitution of the United States, and is in conflict with the interstate commerce clause of the United States constitution, sec. 8 Art. I.

The material facts, part of which were stipulated, are that Lawrence Dyer, appellant, applied for a license to distribute milk in the city of Beloit under the ordinance, set-

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ting forth in his application for a license that he was going to obtain his milk from a pasteurizing plant of the Dean Milk Company located in Chemung, Illinois, a distance of between twenty-five and thirty miles from the point indicated by the ordinance of the city of Beloit, and truck the same to the city of Beloit. As required by the ordinance he filed with the city clerk a list of farmers who furnished milk to the Dean Milk Company plant, the total number of farms being one hundred and ninety-seven. These farms are located in four counties, three of which are in the state of Illinois and one in the state of Wisconsin. The application was denied under the ordinance. The state line between [fol. 39] Wisconsin and Illinois is the south city limits of the city of Beloit.

That cities have a right to pass a milk ordinance for the welfare and health of their citizens is not disputed, and milk ordinances are general in the state of Wisconsin and elsewhere in the nation. Such an ordinance must be reasonable and not arbitrary, must not go beyond the reasonable demands of the occasion, and must tend to accomplish the purpose of its adoption. Courts will not interfere with the exercise of police power by a municipal corporation in the absence of a clear abuse of discretion and unless it is manifestly unreasonable and oppressive, for it is not within the province of the courts, except in clear cases, to interfere with the exercise of this power reposed by law in municipal corporations. 11 Am. Jur. p. 1092, sec. 307. Municipal corporations are prima facie the sole judges respecting the necessity and reasonableness of ordinances under their police power, and every intendment is to be made in favor of the lawfulness and reasonableness of such ordinance. The city is presumed to have full knowledge of local conditions, and its adoption of an ordinance in the light of this knowledge creates a prima facie presumption that it is reasonable. 3 McQuillin, Mun. Corp. (2d ed.) p. 110, sec. 951. The reasonableness of an ordinance depends upon the purpose sought to be accomplished and the effect upon all who must comply with it.

The city of Beloit is in the center of an area producing great quantities of milk, containing a large number of pasteurization plants, condenseries and creameries. The area described in the ordinance includes pasteurization plants [fol. 40] both in Wisconsin and in Illinois. Over four hundred farms are included in the area and slightly over one

hundred farms produce sufficient milk to supply the demand of the city of Beloit. Thus three-fourths of the milk produced in the area is not required to supply the city of Beloit and is shipped elsewhere for such purposes as it may properly be used. The supply of milk in the area is ample for a large number of additional milk plants of any type that may desire to engage in the business. The ordinance clearly was not passed for the purpose of limiting the business to the plants then in operation. Milk is usually delivered to nearby plants as a matter of economy and convenience, which answers the contention that the location of the farms producing the milk is not limited by the ordinance but the location of the pasteurization plant is. The ordinance in question not only provides for the inspection of the pasteurization plants, but requires the inspection of the farms producing the milk.

It is claimed by appellant, and admitted by the city sanitarian from a few examinations made by him, that the milk produced by the Dean Milk Company complied with the sediment tests, blue tests, other tests and content requirements of the ordinance of the city of Beloit. This could well be true of milk purchased from a pasteurization plant a much greater distance from the city of Beloit. Convenience, efficiency, and cost of inspection enter into a determination of the question of the reasonableness of an ordinance. It is said in *State ex rel Larson* v. *City of Minneapolis* (1933), 190 Minn. 138, 251 N. W. 121, with reference to the constitutionality of a milk ordinance, quoting with approval [fol. 41] from the trial court:

> ". . . It is obvious that adequate inspection is a reasonable precaution. It is obvious that consideration of convenience, efficiency and cost of inspection are proper to be taken into account in determining the question of reasonableness. It is also obvious that there is somewhere a limit of distance beyond which inspection by the city's agents would be too inconvenient, too costly, and too likely to be ineffective to be practicable. It seems to me there can be no doubt of the right of the city council to fix a reasonable limit beyond which it will not provide for inspection, and beyond which, for that reason, pasteurization plants will not be licensed. . . ."

The city of Beloit has two employees in this department, the city sanitarian and an assistant, and proof was offered

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that to assume the inspection of the additional plant and farms it would require the employment of another employee at a cost of $2,400 per year, and if other likewise distant plants were included it would cost much more. Convenience and efficiency are self-evident.

It cannot be said that the city, in adopting the section in dispute, arbitrarily acted on the question of convenience, efficiency, and cost of inspection, unless we adopt the rule in the case of *Meridian* v. *Sippy*, 54 Cal. App. (2d) 214, 128 Pac. (2d) 884, where the court said that milk production is a legitimate business and so long as persons engaged in the business put out a clean, pure and wholesome product it should be permitted to flow freely on the markets, unburdened by duplication of inspection and prohibitive trade barriers, which rule we do not adopt.

Counsel for appellant relies on *State ex rel Larson* v. *City of Minneapolis*, supra, and *La Franchi* v. *City of Santa Rosa*, 8 Cal. (2d) 331, 65 Pac. (2d) 1301. In each instance the city passed an ordinance restricting the sale of milk in their respective cities to that pasteurized in plants located within the city limits of the particular city. No considera-[fol. 42] tion was given to the area necessary to furnish the milk, and the plants near the cities in question were arbitrarily prohibited from selling milk in the city. No inspection of the farms producing the milk was provided for in the ordinances, making the facts entirely different from those under consideration. Every ordinance must stand or fall upon its own merits. It is either reasonable or arbitrary in accordance with the facts and purposes it is intended to serve, if within the police powers of the municipality adopting it. The area necessary to be included in the ordinance could well depend upon the population to be served, the amount of milk produced, and the location of the pasteurization plants with reference to the population to be served. A reasonable exercise of police power is not a trade barrier, and contract rights guaranteed under the Fourteenth Amendment of the federal constitution do not have a superior right to the right of a municipality to reasonably protect the health of its citizens.

This ordinance does not violate the interstate commerce clause of the United States constitution. Milk may be furnished from farms and pasteurization plants in the state of Illinois as well as in the state of Wisconsin, and in fact milk is so furnished. The production and delivery of milk are essentially local problems with which congress has not

sought to deal, leaving the city of Beloit free to act in the exercise of its police powers. *State* v. *Chicago, Milwaukee & St. Paul R. Co.* (1908), 136 Wis. 407, 117 N. W. 686, 19 L.R.A. (N. S.) 326; *Wadhams Oil Co* v. *Tracy* (1909), 141 Wis. 150, 123 N. W. 785.

It is argued that secs. 97.31 – 97.37, Stats. prohibit the sale of milk from unhealthy cows, insanitary barns and [fol. 43] utensils, and the sale of insanitary and adulterated milk, and authorize the state department of agriculture to inspect the premises, plants and facilities of transportation and fix the requirements of pasteurization. The department of agriculture assumes responsibility for milk complying with the statutes used in manufacturing, this being known to the public as "Grade B milk," but it leaves to the municipalities the regulation of milk furnished for direct human consumption, known to the public generally as "Grade A milk," except as the department of agriculture assists the municipalities and cooperates with them in requiring dealers to sell clean, wholesome milk produced under sanitary conditions that comply with the state law and local ordinances that may be lawfully passed. This cannot be said to burden interstate commerce in any way.

It is considered that the ordinance is a reasonable exercise of the police power of the city of Beloit.

By the Court.—Judgment affirmed.

[fol. 44] [File endorsement omitted]

IN SUPREME COURT OF WISCONSIN

[Title omitted]

PETITION FOR APPEAL FROM THE SUPREME COURT OF THE STATE OF WISCONSIN TO THE SUPREME COURT OF THE UNITED STATES—Filed July 17, 1947

To Honorable Marvin B. Rosenberry, Chief Justice of the Supreme Court of the State of Wisconsin:

Lawrence Dyer, your petitioner, respectfully shows:

1. Petitioner is the appellant in the above entitled cause.

2. The above named appellant filed a petition for mandamus in the Circuit Court of Rock County, of the State of Wisconsin on the 11th day of September, 1946 to compel the City of Beloit, Wisconsin, to issue to him a milk dis-

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tributor's license, and judgment was entered therein in favor of the appellees.

3. An appeal from said judgment to the Supreme Court of the State of Wisconsin was affirmed by said Supreme Court on the 10th day of June, 1947, and said judgment has become and is a final judgment.

4. In said cause there is drawn in question the validity of a city ordinance of the City of Beloit, Rock County, Wisconsin, on the ground of its being repugnant to the Constitution of the United States, and the decision is in favor of its validity; that said ordinance provides:

> [fols. 45-46] "No pasteurized milk shall be sold in the City of Beloit, which shall not have been pasteurized in approved plants within 6 miles from the intersection of State Street and East Grand Avenue in the City of Beloit";

that it is in violation of Section 8 of Article One of the United States Constitution which provides that the Congress shall have power to regulate commerce with foreign nations and among the several states, and with the Indian tribes; and said ordinance is in violation of the First Section of the Fourteenth Amendment of the Constitution of the United States in that it denies this petitioner of his property without due process of law and denies to this petitioner the equal protection of the laws.

Wherefore, Petitioner prays for the allowance of an appeal from said Supreme Court of the State of Wisconsin to the Supreme Court of the United States, in order that the decision of the Supreme Court of the State of Wisconsin may be examined and reversed, and also prays that a transcript of the record, proceedings and papers in this case, duly authenticated by the clerk of the Supreme Court of the State of Wisconsin may be sent to the Supreme Court of the United States as provided by law.

The errors upon which your petitioner claims to be entitled to an appeal are those above indicated and more fully set out in the assignment of errors filed herewith.

Dated: July 14th, 1947.

Claude D. Stout, Milton, Wisconsin, Attorney for petitioner and Proposed Appellant.

George S. Geffs, Eli Block and Jacob Geffs of McGowan, Geffs, Geffs & Block, Janesville, Wisconsin, of Counsel.

[fol. 47] [File endorsement omitted]

IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

ASSIGNMENT OF ERRORS—Filed July 17, 1947

The said Lawrence Dyer assigns the following errors in the record and proceedings in the said case:

1. The Supreme Court of the State of Wisconsin erred in holding and deciding that Sec. 8.09 (X) (2) of the Beloit City Ordinance which reads:

> "No pasteurized milk shall be sold in the City of Beloit which shall not have been pasteurized in approved plants within six miles from the intersection of State Street and East Grand Avenue in the City of Beloit.",

did not deprive appellant of his property rights without due process of law, did not deprive appellant of his right of contract, and did not deny to appellant the equal protection of the laws within the meaning of section 1 of article XIV of the Amendments to the Constitution of the United States.

2. The Supreme Court of the State of Wisconsin erred in holding and deciding that said city ordinance as applied to appellant did not violate section 8, article I of the Constitution of the United States, being what is commonly called the Interstate Commerce clause of the United States Constitution.

PRAYER FOR REVERSAL

For which errors said Lawrence Dyer, appellant herein, prays that the said decision and judgment of the Supreme [fols. 48-49] Court of the State of Wisconsin, dated June 9, 1947, be reversed and that a judgment be rendered in favor of said appellant herein, and for costs.

Dated at Janesville, Wisconsin, this 14th day of July, 1947.

Claude D. Stout, Attorney for Appellant, Milton, Wisconsin.

George S. Geffs, Jacob Geffs and Eli Block, of McGowan, Geffs, Geffs & Block, Janesville, Wisconsin, of Counsel.

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[fol. 50] IN SUPREME COURT OF WISCONSIN

[Title omitted]

ORDER ALLOWING APPEAL TO SUPREME COURT OF UNITED STATES—Filed July 30, 1947

The petition of Lawrence Dyer for an appeal in the above cause to the Supreme Court of the United States from the Supreme Court of the State of Wisconsin and assignment of errors while therewith and the record of said cause having been considered, it is

Ordered that an appeal be and is allowed to the Supreme Court of the United States from the Supreme Court of the State of Wisconsin, as prayed in said petition, and that the clerk of the Supreme Court of the State of Wisconsin shall prepare and certify a transcript of the record and proceedings in the above cause and transmit the same to the Supreme Court of the United States within 40 days from the date hereof.

It is further ordered that said petitioner shall give good and sufficient security in the sum of $250.00, that said appellant shall prosecute said appeal to effect, and if said appellant fails to make his plea good he shall answer all damages and costs.

The said appellant now presenting a bond in the sum of $250.00 with Standard Accident Insurance Company of Michigan and authorized to do business in Wisconsin as surety.

It is ordered that the same be and is hereby approved.

The appeal shall operate as a supersede-s.

Chester A. Fowler, Acting Chief Justice of the Supreme Court of Wisconsin. (Seal)

Dated: July 30, 1947.

[fols. 51-54] [File endorsement omitted.]

[fols. 55-56] Bond on appeal for $250.00, filed July 17, 1947, omitted in printing.

[fols. 57-80] Citation in usual form showing service on E. J. Caskey, et al., filed July 17, 1947, omitted in printing.

[File endorsement omitted.]

[fol. 81] IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

PRAECIPE FOR RECORD—Filed July 25, 1947

To the Clerk of the Supreme Court of Wisconsin:

Please prepare a transcript of the record in the above entitled cause in the matter of appeal therein to the Supreme Court of the United States and include in said transcript the following:

1. Petition for mandamus
2. Appellees answer
3. Decision and order denying writ of mandamus
4. Judgment of Circuit Court denying petition
5. Notice of appeal to Supreme Court
6. Appeal bond
7. The attached notice of testimony and Beloit City Ordinance in lieu of bill of exceptions
8. Appeal to the Supreme Court, Appeal bond, argument before Supreme Court, and opinion of Supreme Court
9. Judgment of the Supreme Court of Wisconsin
10. Petition for appeal to Supreme Court of the United States
11. Assignment of Errors
12. Order Allowing Appeal
13. Notice of Service on Appellees
14. Appeal Bond on Appeal to the Supreme Court of the United States
15. Citation of Appeal

[fols. 82-83] 16. Statement as to Jurisdiction

17. Praecipe

Claude D. Stout, Milton, Wisconsin, Attorney for Appellant; George S. Geffs, Jacob Geffs, Eli Block of McGowan, Geffs, Geffs & Block, Janesville, Wisconsin, of Counsel.

Dated: 18th day of July, 1947.

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Service of the foregoing praecipe for transcript of record and the receipt of a copy thereof are hereby acknowledged, this the 31st day of July, 1947. And it is hereby agreed that the matter set forth in said praecipe shall constitute the entire transcript of the record in this appeal; and that the stipulation of testimony and Exhibit may be substituted for the Bill of Exceptions.

C. L. Haugan, Earl J. Caskey, of the firm of Arnold, Caskey and Robson, all of Beloit, Wisconsin, Attorneys for Appellees.

[fol. 84] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 85] In Supreme Court of the United States

[Title omitted]

Statement of Points to Be Relied Upon and Designation of Record—Filed September 2, 1947

Comes now Appellant, Lawrence Dyer, plaintiff above named, and states that his appeal is from the whole of the final judgment given, made and entered in the above entitled cause on the Tenth (10th) day of June, 1947, and that said appellant will rely on his appeal herein on the following points:

I

That the Supreme Court of the State of Wisconsin erred in finding that the Ordinance of the City of Beloit, Rock County, Wisconsin, which reads,

> "No pasteurized milk shall be sold in the City of Beloit which shall not have been pasteurized in approved plants within six miles from the intersection of State Street and E. Grand Ave. in the City of Beloit."

is not a trade barrier and does not violate the right of contract guaranteed under the Fourteenth (14th) Amendment of the Constitution of the United States.

II

That the said Supreme Court of the State of Wisconsin [fols. 86-87] erred in finding that the Ordinance of the City

of Beloit, Rock County, Wisconsin, is not in conflict with Section 8, Art. I of the Constitution of the United States, generally known as the Inter-State Commerce Clause of the Constitution.

III

That the Supreme Court of the State of Wisconsin erred in finding that the Ordinance of the City of Beloit, Rock County, Wisconsin, above quoted, is a reasonable exercise of the Police Power of the City of Beloit, Rock County, Wisconsin.

Appellant states that the whole of the record, as filed, is necessary for the consideration of the case.

Claude D. Stout, Milton, Wisconsin; George S. Geffs, Jacob Geffs, Eli Block, of Counsel, Janesville, Wisconsin.

Due Service and receipt of a copy of the within statement of points admitted this the 30th day of August, 1947.

J. Arthur Moran, Delavan, Wisconsin, Attorney for Appellees; Earl J. Caskey, of the firm of Arnold, Caskey & Robson, Beloit, Wisconsin, of Counsel.

[fol. 88] Supreme Court of the United States

Order Noting Probable Jurisdiction—October 13, 1947

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

Endorsed on Cover: Enter Claude D. Stout. File No. 52,505, Wisconsin, Supreme Court, Term No. 275. Lawrence Dyer, Appellant, vs. City Council of the City of Beloit, Rock County, Wisconsin, et al. Filed August 18, 1947. Term No. 275 O.T. 1947.